RECORD AND BRIEFS

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In The

Supreme Court of the United States

OIL STATES ENERGY SERVICES, LLC,

Petitioner,

v.

GREENE'S ENERGY GROUP, LLC, ET AL.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

BRIEF AMICUS CURIAE FOR UNISONE STRATEGIC IP, INC., IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus Unisone Strategic IP, Inc., like the Petitioner in this case, is a patent holder whose property rights have been subject to review and administrative cancellation by the PTAB.[1] Amicus therefore has an interest in preserving the right to Article III adjudication and to a jury trial on the issue of patent validity – issues that are raised in this case.

This brief is filed with the consent of all parties to this case, pursuant to the letters filed with the Clerk by all parties granting "blanket consent" to amicus curiae briefs.

SUMMARY OF ARGUMENT

A "fair trial in a fair tribunal is a basic requirement" of our system of justice, and a "necessary component of a fair trial is an impartial judge." *Weiss v. U.S.*, 510 163, 178 (1994) (quoting *In re Murchison*, 349

[1] All parties consent to the filing of this amicus curiae brief. Pursuant to Supreme Court Rule 37.6, the undersigned further affirms that no counsel for a party authored this brief in whole or in part, and no person or entity other than amicus curiae or its counsel made a monetary contribution specifically for the preparation or submission of this brief.

U.S. 133, 136 (1955)). The PTAB, however, is not an impartial arbiter of the validity of patents in the IPR proceedings it administers.

Unlike Article III courts, whose operations are financed primarily from appropriations of federal funds from Congress[2] – and unlike *any* of the federal agencies whose proceedings were approved by this Court in its line of public rights cases – the PTO is "an agency funded entirely by user fees."[3] The PTO's dependence on user fees therefore has a significant distorting effect on its decisionmaking, as shown in empirical research discussed below. The agency's dependence on user fees renders an impartial decision by the PTAB impossible because a decision to grant an IPR petition results in a higher fee than if the petition were denied. The PTAB

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[2] *See, e.g.*, Matthew E. Glassman, Cong. Research Serv., R44526, *Judiciary Appropriations, FY2017* (2017) (discussing the funds provided by Congress to the federal judiciary), *available at* https://fas.org/sgp/crs/misc/R44526.pdf. While the federal judiciary does use some "non-appropriated funds to help offset its funding requirements," such as "court filing fees," these are in no way tied to the outcomes of federal cases. *Id.* at 4. By contrast, as discussed below, the PTAB has incentives to overgrant IPR proceedings because its decision to grant a petition for IPR results in a higher fee collection than a decision denying the petition, and because overgranting IPR's provides reputational cover for the broader overgranting of patents that occurs at the PTO generally. Both behaviors are driven by the PTO's dependence on user fees, rather than Congressional appropriations, for its funding. *See infra* Sec. I.

[3] U.S. Patent & Trademark Office, Performance and Accountability Report, Fiscal Year 2016, at 47 (2016) [hereinafter "PTO 2016 Performance & Accountability Report"], *available at* https://www.uspto.gov/sites/default/files/documents/USPTOFY16PAR.pdf.

therefore has a strong incentive to overgrant petitions. The more IPR petitions it grants, the more fees it collects. The PTAB thus "has a pecuniary interest in the outcome" of these proceedings that subjects its decisionmaking to bias and a "biased decisionmaker [is] constitutionally unacceptable." *Withrow v. Larkin*, 421 U.S. 35, 47 (1975).

The PTAB's decisionmaking is distorted by subtler incentives as well. The PTAB has reputational reasons to overinvalidate patents subject to such review in order to offset the PTO's broader pattern of overgranting patents in the first place – a pattern that has made the agency a target of significant criticism from the public and from Congress. As discussed below in more detail, recent empirical research has demonstrated the existence of such a pattern and the distorting effects of the PTO's user fee system on the agency's decisionmaking. This brief shows how the PTAB, too, operating within the framework of the PTO's distorting system of incentives, suffers from a strong likelihood of structural bias.

In this case, "the probability of actual bias on the part of the judge or decisionmaker" deciding the validity of granted patents – vested property rights whose validity has traditionally been tried to a jury in Article III courts – "is too high to be constitutionally tolerable." *Withrow*, 421 U.S. at 47. And since "our system of law has always endeavored to prevent even the probability of unfairness," this Court should hold the PTAB's administrative scheme of *inter partes* review to be

"constitutionally unacceptable." *Murchison*, 349 U.S. at 136.

ARGUMENT

I. THE PTAB SUFFERS FROM A STRUCTURAL BIAS TOWARD OVERGRANTING IPR PETITIONS AND OVERINVALIDATING PATENTS, AND CANNOT FAIRLY ADJUDICATE PATENT VALIDITY.

Since 1991, the Patent and Trademark Office ("PTO") has been funded almost entirely by "user fees."[4] Thus its budget, rather than being financed directly through Congressional appropriations of federal funds,[5] "is derived from the fees collected for patent

[4] Michael D. Frakes & Melissa F. Wasserman, *Does Agency Funding Affect Decisionmaking?: An Empirical Assessment of the PTO's Granting Patterns*, 66 Vand. L. Rev. 67, 68-69 (2013) (citing Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 10101, 104 Stat. 1388).

[5] While Congress does not directly appropriate funding to the PTO, it does set the level at which the PTO may spend the fees it collects. In effect, Congress sets a cap beyond which the PTO may not spend excess fees without additional authorization by Congress. Those fees are held in abeyance by the PTO and sometimes spent pursuant to Congressional authorization or, "[m]ore typically, the excess fees are utilized by Congress to fund other government operations," a controversial practice known as "fee diversion" from the PTO. *See* Frakes & Wasserman, *supra*, note 4, at 77-78 (noting that "[w]hen the PTO's fee collections fall below its appropriated budget, the Agency will experience a budgetary shortfall, as Congress does not provide the Agency with the difference. In contrast, if the PTO's fee collections surpass its

and trademark products and services" the agency provides. In Fiscal Year 2016, 91% of the PTO's "earned revenue" ($3.133 billion) was derived from patent-related fees,[6] and 83% of "earned revenue derived from patent operations" was drawn from "maintenance fees" paid by patent owners to keep their patents in good standing after issuance; from "initial application fees for filing, search, and examination" paid by patent applicants for the PTO to examine their patent applications; and from "issue fees" paid by applicants whose patents have been approved but not yet issued.[7]

These fees are all contingent on patent issuance. For example, "maintenance fees" – which are the "largest source of earned revenue" for the PTO, amounting to $1.212 billion in FY 2016[8] – are payable at various intervals after a patent issues and thus depend upon patents actually issuing. Thus, the more patents granted by the PTO, the more maintenance fees the agency can collect.

Similarly, "application fees" collected by the PTO are influenced by perceptions of whether the PTO is likely to grant a given patent application; the more permissive the PTO is in granting patents, the greater the likelihood that they will be applied for, and the more

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spending authority, the excess fees are not immediately available to the PTO.").

[6] PTO 2016 Performance & Accountability Report, at 39.

[7] *Id.* at 40.

[8] *Id.* at 39-40. Application and issue fees comprise almost all of the remaining PTO revenue.

application fees will be collected.[9] "Issue fees" are contingent in much the same way; an applicant is only required to pay an issue fee when a patent application is deemed worthy of issuance, and therefore the more applications granted, the more issue fees the PTO can collect.

Given the PTO's dependency on user fees, the Office has strong incentives to maximize revenue. Indeed, the PTO is not alone in this regard. As one recent study found, "[a]gencies that are at least partially funded by fees on the entities they regulate are generally growing at a faster rate than those that depend on appropriations from general funding."[10] And because the user fees on which the PTO depends are themselves contingent upon the rate at which patents are granted, the PTO has an incentive to grant as many patents as possible. The easier it is to obtain a patent at the PTO, the more applications (and fees) the agency will attract, the more patents it will issue (and the more issue fees will be paid), and the more maintenance fees it will collect after patent issuance.

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[9] Indeed, the "PTO once famously asserted that its 'primary mission' is 'to help customers get patents.'" Michael D. Frakes & Melissa F. Wasserman, *Does the U.S. Patent and Trademark Office Grant Too Many Bad Patents?: Evidence from a Quasi-Experiment*, 67 Stan. L. Rev. 613, 619 (2015).

[10] Susan Dudley & Melinda Warren, *Economic Forms of Regulation on the Rise: An Analysis of the U.S. Budget for Fiscal Years 2014 and 2015* (Jul. 2014), at 1. https://wc.wustl.edu/files/wc/imce/2015_regulators_budget_0.pdf?_ga=2.95405659.612041730.1503414481-1803836511.1503414481.

Recent empirical research has demonstrated that these very incentives work to induce a bias in PTO decision-making patterns. As Frakes and Wasserman concluded in a recent study, "[o]ur results suggest that the Agency's fee schedule biases the PTO toward granting patents."[11] It was found, moreover, that, "the PTO is preferentially granting patents on technologies with high renewal rates and patents filed by large entities, as the PTO stands to earn the most revenue by granting additional patents of these types," and that "these distortions are more likely to occur when markers indicative of an underfunded PTO are present."[12] In subsequent work, Frakes and Wasserman found that the PTO became "*more* heavily reliant on overgranting as the relevant mechanism" for "deal[ing] with binding budget constraints" once Congress began, in 2004, to allow the agency to keep more of the fees it collects.[13]

For many of the same reasons, the PTO's dependency on user fees induces it not only to overgrant

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[11] Frakes & Wasserman, *supra* note 4, at 70.

[12] *Id.*

[13] Michael D. Frakes & Melissa F. Wasserman, *The Failed Promise of User Fees: Empirical Evidence from the U.S. Patent and Trademark Office*, 11 J. Empirical Legal Stud. 602, 605 (2014) (emphasis added). As explained above, the PTO has not always been authorized to spend all of the funds it collects, but has been dependent on Congressional authorization to set the level at which it may spend user fees. Beginning in 2004, Congress allowed the agency to spend more such fees than had previously been the case, further incentivizing overgranting of patents. *See id.*; *see also supra* note 5.

patents, but also incentivizes the PTAB to overgrant IPR petitions and to over-invalidate the patents it reviews in IPR proceedings.[14]

First, the PTAB has an incentive to over-grant IPR petitions simply in order to maximize the fees it can collect. Moreover, since the PTO is required to "refund the post-institution fee if the IPR proceeding is not instituted by the PTAB," the PTAB has an additional incentive to grant an IPR petition and actually institute the IPR proceeding in order to avoid having to refund the post-institution portion of the fee.[15] Further, because the PTAB's decision whether to institute IPR proceedings is judicially unreviewable, the PTAB faces

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[14] The allowance rate (excluding Requests for Continued Examination) for Fiscal Year 2017 (through July 31, 2017) is 71.1%. U.S. Patent and Trademark Office, Patent UPR Application Allowance Rate (2017), available at https://www.uspto.gov/corda/dashboards/patents/kpis/kpiAllowed.kpixml. For Fiscal Year 2017 (through July 31, 2017), the USPTO granted 63% of IPR petitions. U.S. Patent & Trademark Office, Trial Statistics IPR, PGR, CBM, Patent Trial and Appeal Board July 2017, at 7 (2017), available at https://www.uspto.gov/sites/default/files/documents/trial_statistics_july2017.pdf. Since September 16, 2012, 82% of final written decision found some or all instituted claims unpatentable. *Id.* at 11. Extant statistics do not give the full picture, however, since the PTO undercounts the rate at which it institutes IPR petitions, counting cases that settled prior to actual decision on whether to institute in the same category as cases which it elected not to institute. *See* Michael E. Sandler, *By the Numbers: Is the PTO Underreporting the Rate They Institute IPRs and CBMs?*, PATENTLYO (May 16, 2016), *available at* https://patentlyo.com/patent/2016/05/numbers-underreporting-institute.html

[15] *Setting and Adjusting Patent Fees During Fiscal Year 2017*, 81 Fed. Reg. 68150, 68164 (Oct. 3, 2016).

few, if any, consequences for overgranting IPR petitions. *See Cuozzo Speed Techs., LLC v. Lee*, 136 S.Ct. 2131 (2016) (reading 35 U.S.C. § 314 to bar judicial review of the decision to institute IPR).

Second, the PTAB has a reputational incentive both to over-grant IPR petitions and to invalidate the patents it reviews. The PTO has long been the target of criticism "for failing to do a serious job of examining patents, thus allowing bad patents to slip through the system."[16] The reputation the PTAB has earned as a "death squad for killing patents" has provided the PTO with reputational cover – especially with Congress – and is allowing the agency to continue over-granting patents in the first instance. In essence, the agency perpetuates two wrongs to make a right: overgranting IPR's at the PTAB is justifying the continued overgranting of patents by the PTO generally.[17]

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[16] Mark A. Lemley, *Rational Ignorance at the Patent Office*, 95 Nw. U. L. Rev. 1495 (2001).

[17] As former Federal Circuit Chief Judge Rader observed:

"There's a tension throughout the system . . . you've got an agency with 7,000 people giving birth to property rights, and then you've got, in the same agency, 300 or so people on the back end . . . acting as death squads, kind of killing property rights."

Brian Mahoney, *Software Patent Ruling A Major Judicial Failure, Rader Says*, LAW360 (Oct. 25, 2013), *available at* https://www.law360.com/articles/482264/software-patent-ruling-a-major-judicial-failure-rader-says

Third, the over-granting of IPR petitions is "more likely to occur when markers indicative of an underfunded PTO are present."[18] Indeed, there is some evidence that IPR proceedings have been more costly than the PTO initially projected. The PTAB's "case workload" "has increased . . . to levels that make meeting the AIA's 12-month pendency requirements more challenging."[19] And the PTO has stated that the increasing use of "post-issuance proceedings" (primarily, IPR) has had the effect of "increasing the demand for agency resources at both the PTAB and in the OGC."[20] In response, the PTO has recently proposed fee increases associated with IPR as high as 56%.[21]

Given the distorting impact of these incentives, and particularly in view of the proposed fee increase, it is likely that IPR's will continue to be over-granted. "The probability of actual bias on the part of the" PTAB "is too high to be constitutionally tolerable" because it "has a pecuniary interest in the outcome" of IPR proceedings, as well as a reputational one. *Withrow*, 421 U.S. at 47. This Court must hold IPR unconstitutional.

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[18] Frakes & Wasserman, *supra* note 4, at 70.

[19] PTO 2016 Performance & Accountability Report, at 28.

[20] *Id.* at 29.

[21] *See* 81 Fed. Reg., *supra* note 15, at 68164. The IPR "request fee" is being raised by 56% (from $9,000 to $14,000), while the "post-institution fee" is being raised by 18% (from $14,000 to $16,500). *Id.*

II. CONGRESS MAY NOT ASSIGN THE ADJUDICATION OF VESTED PATENT RIGHTS TO A STRUCTURALLY BIASED AGENCY WHOSE DECISIONMAKING IS DISTORTED BY ITS DEPENDENCE ON FUNDING FROM USER FEES.

This Court's public rights doctrine has never purported to assign the adjudication of vested property rights to a structurally biased agency whose decisionmaking is distorted by its dependence on funding from user fees, and should not do so here.

To begin with, the important question for purposes of the public rights analysis is whether "the legal rights on which the government is proposing to act *have vested* in a particular individual or instead belong to the public as a whole."[22] As one scholar has observed in the analogous area of land patents, "[o]nce private individuals could claim vested rights in the land, however, the executive branch's authority to act conclusively ran out."[23] Clearly, patent rights, as fully *vested* property rights owned by individuals or companies, are not "public rights."

Even if this were not so, Congress may not assign the adjudication of *any* right – public or private – to an agency suffering from structural bias. *None* of the

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[22] Caleb Nelson, *Adjudication in the Political Branches*, 107 Colum. L. Rev. 559, 573 (2007) (emphasis added).

[23] *Id.* at 578. *See Consolidated Fruit-Jar Co. v. Wright*, 94 U.S. 92, 96 (1876) ("patent for an invention is as much property as a patent for land")

federal agencies in this Court's line of public rights cases has been wholly funded by user fees, like the PTO, and none have risked the kind of systemic bias that has resulted therefrom. For example, the CFTC approved by this Court in *Commodity Futures Trading Com'n v. Schor*, 478 U.S. 833 (1986) has *never* been funded by user fees.[24] Nor was the Employees' Compensation Commission in *Crowell v. Benson*, 285 U.S. 22 (1932) or the bankruptcy courts whose proceedings were at issue in *Northern Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989), and *Stern v. Marshall*, 564 U.S. 462 (2011).

In *Tumey v. State of Ohio*, 273 U.S. 510 (1927), this Court held it unconstitutional for a court to be presided over by the mayor of the village whose budget was enlarged by the fines the court assessed. As this Court explained, since the village finances were tied to the "pecuniarily successful conduct of such a court," this "awaken[ed] the interest of all those in the village charged with the responsibility of raising the public money and expending it." *Id.* at 533. "With his interest as mayor in the financial condition of the village and his responsibility therefor[e]," this Court continued, "might not a defendant with reason say that he feared he could not get a fair trial or a fair sentence from one

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[24] *See Statement by Commissioner Sharon Y. Bowen on the Commodity Futures Trading Commission's 2018 Budget Request* (May 23, 2017) ("The CFTC has long-asked for user fees to fund itself, and we have yet to receive them."), *available at* http://www.cftc.gov/PressRoom/SpeechesTestimony/bowenstatement052317.

who would have so strong a motive to help his village by conviction and a heavy fine?" *Id.*

The same fear could be articulated by patent owners who find themselves in IPR proceedings before the PTAB. Since the PTAB is directly funded by a decision adverse to the patent owner (i.e., the decision to institute an IPR proceeding) it cannot be fair at the institution stage. Moreover, since the PTAB's reputation for rigor is enhanced by ultimately invalidating the patents it reviews (an outcome that provides the PTO some latitude to continue overgranting patents in pursuit of maintenance fees), it cannot be fair in rendering decisions on the merits.

As with the justice of the peace in *Connally*, the "financial welfare" of the PTO is "enhanced by positive action" of the PTAB in granting an IPR petition much more so than by "negative action" in denying it, because the PTAB may thereby retain the entire fee. *Connally v. Georgia*, 429 U.S. 245, 250 (1977) (holding issuance of search warrant by justice of the peace unconstitutional because of his "pecuniary interest in his conclusion to issue or deny the warrant"). This Court has explained that where the "possible temptation may also exist" to allow "executive responsibilities" for "finances" to influence a judicial decision in such a way as would "maintain the high level of contribution" to government revenues, this is unconstitutional. *Ward v. Village of Monroeville*, Ohio, 409 U.S. 57, 59-60 (1972).

Clearly, owing to the incentives driven by the PTO's reliance on user fees and its system of fees for

IPR proceedings, the "possible temptation" to overgrant IPR petitions "may also exist." *Ward*, 409 U.S. at 60. Like the mayor in *Ward*, whose "executive responsibilities for village finances may make him partisan to maintain the high level of contribution from the mayor's court" – which brought revenue from ordinance violations and traffic offenses – here the PTO "occupies two practically and seriously inconsistent positions, one partisan and the other judicial." *Id.* The PTO cannot be in the business both raising revenue and rendering decisions that undermine its own revenue stream. And it cannot be simultaneously engaged in the overgranting of patents on one hand, and in the revival of its reputation through the over-invalidation of patents on the other. In light of *Ward* and *Tumey*, IPR does not pass constitutional muster.

This Court has held that "to perform its high function in the best way *justice must satisfy the appearance of justice*" and hence even "judges who have no actual bias" may be barred from sitting in trial if the appearance of injustice were to manifest. *Murchison*, 349 U.S. at 136 (quotation omitted).

Unlike administrative regulatory schemes found constitutionally sufficient in this Court's prior public rights cases, the PTAB's orders do not serve as an "adjunct" to district court proceedings but routinely conflict with district court decisions on patent validity – even when premised on the same evidence. Thus, unlike the CFTC orders in *Schor* or those of the agency in *Crowell*, PTAB decisions are *not* "enforceable only by order of the district court." *Schor*, 478 U.S. at 853. As

one scholar has remarked, noting several cases in which "a court has ruled in the patent holder's favor on the issue of validity . . . but the PTO, in a concurrent [IPR] proceeding, ruled that the patent was invalid,"

> "Like Schroedinger's cat, which seemed to be both alive and dead, these patents appear to be both valid (according to the court) and invalid (according to the PTO)."[25]

This Court must not look the other way when an agency proceeding "chip[s] away at the authority of the Judicial Branch" in the hope that some good will be done by the agency's technical expertise -- especially when, reportedly, the PTAB has staffed some cases with administrative law judges having *no* expertise whatsoever in the technology before them.[26] That troubling practice completely undermines *Crowell*'s rationale of agency expertise.

Moreover, as two judges of the Federal Circuit recently warned, the PTAB appears to be sometimes stacking IPR panels with judges in order to obtain the results it wants in certain cases. *See Nidec Motor Corporation v. Zhongshan Broad Ocean Motor Co. Ltd.*, 2017 WL 3597455, at *6 (Fed. Cir. Aug. 22, 2017) (Dyk & Wallach, JJ., concurring) ("[W]e are also concerned

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[25] Paul R. Gugliuzza, *(In)valid Patents*, 92 Notre Dame L. Rev. 271, 273 (2016).

[26] *See* Charles W. Shifley, *"Your PTAB Judges Will Be Experts" – Right? . . . Not So Fast*, BANNER & WITCOFF, PTAB HIGHLIGHTS (July 26, 2016), *available at* https://bannerwitcoff.com/wp-content/uploads/2016/08/ALERT-PTAB-Highlights.Shifley.07.26.2016.pdf

about the PTO's practice of expanding administrative panels . . . While we recognize the importance of achieving uniformity in PTO decisions, we question whether the practice of expanding panels where the PTO is dissatisfied with a panel's earlier decision is the appropriate mechanism of achieving the desired uniformity."). In an earlier colloquy between the PTO Solicitor and the Federal Circuit during oral argument, the PTO argued that it had the authority to stack panels of PTAB judges in order to achieve a desired outcome whenever the PTO "Director is trying to ensure that her policy position is being enforced by the panels."[27] This troubling practice alone raises serious

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[27] *See Yissum Research Development Co. v. Sony Corp.*, No. 2015-1342, Oral Arg. Recording at 47:20 – 48:20 (Fed. Cir. Dec. 7, 2015), available at http://oralarguments.cafc.uscourts.gov/default.aspx?fl=2015-1342.mp3

(THE COURT: "And anytime there has been a seeming other outlier, you've engaged the the power to reconfigure the panel so as to get the result you want?

PTO: "Yes, Your Honor."

THE COURT: "And you don't see a problem with that?

PTO: "Your Honor, the Director is trying to ensure that her policy position is being enforced by the panels – "

THE COURT: "The Director is not given adjudicatory authority, right, under section 6 of the statute that gives it to the Board [PTAB]?"

PTO: Right. To clarify, the Director is a member of the Board. But, Your Honor is correct – "

THE COURT: "But after the panel is chosen, I'm not sure I see the authority there to engage in case specific re-adjudication from the Director after the panel has been selected."

PTO: "That's correct, once the panel has been set, it has the adjudicatory authority and the – "

questions regarding the integrity of the PTAB's administration of IPR proceedings and their independence from the policy preferences – or budgetary imperatives – of the PTO Director, often a political appointee. Yet, as observed by the concurring judges in *Nidec*, today the practice of PTAB panel-stacking in IPR continues unabated.[28]

In light of the strong incentives for biased decisionmaking by the PTAB in IPR proceedings, and the willingness of the PTO Director to impose her "policy preferences" on IPR proceedings, "the probability of actual bias" in IPR "is too high to be constitutionally tolerable." *Withrow*, 421 U.S. at 47. Since "our system of law has always endeavored to prevent even the probability of unfairness," this Court should hold the PTAB's administrative scheme of *inter partes* review to be "constitutionally unacceptable." *Murchison*, 349 U.S. at 136.

THE COURT: "Until, in your view, it's reset by adding a few members who will come out the other way?"

PTO: "That's correct, Your Honor.")

[28] *See Nidec*, 2017 WL 3597455, at *6 (Dyk & Wallach, JJ., concurring); *see also* Gene Quinn, *USPTO Admits to Stacking PTAB Panels to Achieve Desired Outcomes*, IPWatchdog.com (Aug. 23, 2017), *available at* http://www.ipwatchdog.com/2017/08/23/uspto-admits-stacking-ptab-panels-achieve-desired-outcomes/id=87206/; Selection Process for Assigning Judges to Expanded PTAB Panels, 717 MADISON PLACE (Aug. 20, 2017), *available at* http://www.717madisonplace.com/?p=9143.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed.

Respectfully submitted,

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